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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 879

SOUTHERN PACIFIC COMPANY, a railroad corporation, Intervener, *Petitioner,*

vs.

BERRYMAN HENWOOD, as Trustee of St. Louis Southwestern Railway Company Lines, et al., *Respondents.*

No. 909

WALTER E. MEYER, Intervener, *Petitioner,*

v.

BERRYMAN HENWOOD, as Trustee of St. Louis Southwestern Railway Company Lines, et al., *Respondents.*

No. 936

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, a Corporation, Debtor, *Petitioner,*

vs.

BERRYMAN HENWOOD, as Trustee of St. Louis Southwestern Railway Company Lines, et al., *Respondents.*

BRIEF IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI

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BRIEF IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The respondent Chemical Bank & Trust Company (hereinafter referred to as the "General and Refunding Trus-

tee"), the successor and sole Trustee under the Debtor's General and Refunding Mortgage dated July 1, 1930, files this brief in opposition to the petitions of the Debtor, Southern Pacific Company and Mr. Walter E. Meyer which request this Court to review the decision of the Circuit Court of Appeals affirming the District Court's order approving the Plan of Reorganization of the Debtor (hereinafter referred to as the "Commission's Plan").

Reports and Opinions Below

The Report and Order of the Interstate Commerce Commission (herein referred to as the "Commission") of June 30, 1941 (R. 3495-3735) are reported in 249 I. C. C. 5, and its Supplemental Report and Order of March 9, 1942 (R. 3736-3820) are reported in 252 I. C. C. 325.

The opinion of the District Court (R. 5183-5212) is reported in 53 F. Supp. 914. The opinion of the Circuit Court of Appeals (R. 5559-5683) is reported in 157 F. (2d) 337.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered August 26, 1946 (R. 5681-5683). Petitions for rehearing were denied October 22, 1946 (R. 5831). The petitions for writs of certiorari were filed, respectively, January 13, 1947 (No. 879), January 18, 1947 (No. 909), and January 21, 1947 (936). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. Sec. 347 (a)), and Section 24 of the Bankruptcy Act (11 U. S. C. Sec. 47 (c)).

Statute Involved

The statute involved is Section 77 of the Bankruptcy Act as amended (11 U. S. C. Sec. 205).

STATEMENT

The Scope of This Brief

The General and Refunding Trustee is the sole representative in the reorganization proceedings of the Debtor, of the members of the public who own outright $9,327,500 in principal amount of General and Refunding Bonds.

The General and Refunding Trustee believes that the allocation of securities of the reorganized company to the General and Refunding Bondholders by the Commission's Plan constitutes the minimum treatment to which the General and Refunding Bondholders are entitled. Under the Commission's Plan the brunt of the Debtor's reorganization falls to a great extent on the General and Refunding Bondholders. Any recognition of stockholders of the Debtor by the distribution to them of securities of the reorganized company would most seriously affect the General and Refunding Bondholders and might indeed be made at their expense. It is on this account that the General and Refunding Trustee submits this brief.

The General and Refunding Trustee has studied the briefs in opposition filed herein on behalf of Guaranty Trust Company, Trustee under the Debtor's First Terminal and Unifying Mortgage and by the Protective Committee for holders of the Debtor's First Terminal and Unifying Bonds. In order to avoid repetitious argument, this brief will merely present certain facts relating to the status of the General and Refunding Bondholders in the Debtor's reorganization and a brief argument which points out that full compensatory treatment of the General and Refunding Bondholders will require more than the mere issuance of additional shares of common stock of the reorganized company, sufficient to fill the gap between the amount of the claim on each General and Refunding Bond and the aggregate principal amount and par value of new securities allocated to each such claim by the Commission's Plan.

Status of the General and Refunding Bondholders in the Debtor's Reorganization

Outstanding General and Refunding Bonds

There are outstanding under the General and Refunding Mortgage $39,557,500 principal amount of General and Refunding Bonds, of which

$ 9,327,500	in principal amount are held outright by the public;
23,903,000	in principal amount are pledged to secure the Debtor's notes in the principal amount of $17,882,250 acquired by Southern Pacific Company from Reconstruction Finance Corporation;
4,921,500	in principal amount are pledged to secure notes of the Debtor in the principal amount of $3,500,000 to The Chase National Bank of the City of New York; and
1,405,500	in principal amount are pledged to secure notes of the Debtor in the principal amount of $1,000,000 to the Mississippi Valley Trust Company.
$39,557,500	total principal amount outstanding.

(R. 3780-3781)

Representation of the General and Refunding Bondholders in the Debtor's Reorganization Proceedings

The Chase National Bank of the City of New York and Mississippi Valley Trust Company (herein referred to as "the Banks") are jointly represented in these proceedings by their own counsel, and have actively participated throughout these proceedings in their own interest.

Southern Pacific Company, the holder of most of the Debtor's stock and the pledgee of General and Refunding Bonds, is represented by its own counsel and has filed one of the petitions now being considered.

There have been a number of instances in these proceedings where the interests of the outright owners of General and Refunding Bonds and of the pledgees of such Bonds have not been identical. In each such instance the General and Refunding Trustee has considered the matter solely from the viewpoint of the interests of such outright owners and has urged the Commission and the Courts to adopt the solution which it believed would be most beneficial to them.

Counsel for the Banks and counsel for Southern Pacific Company have made no objection to this practice of the General and Refunding Trustee.

At this stage of the proceedings there is no conflict of interest between the outright owners of General and Refunding Bonds and the pledgees as such. It is true that the Commission's Plan treats the pledgees as if they were outright owners of the pledged General and Refunding Bonds which in principal amount greatly exceed the principal amount of the Debtor's notes for the payment of which General and Refunding Bonds were pledged. It is conceivable that a conflict of interest would arise between the outright owners and pledgees of General and Refunding Bonds if the value of the securities so allocated to the pledgees of the General and Refunding Bonds were to exceed the amounts owed by the Debtor on the notes.

A serious conflict of interest does exist between the outright owners of the General and Refunding Bonds and Southern Pacific Company, as the owner of approximately 87% of the outstanding stock of the Debtor.

Allocation to the General and Refunding Bondholders Proposed in the Commission's Plan

The Commission's Plan proposes that, subject to adjustment for interest payments made on the Debtor's securities after December 31, 1941 (R. 3812), the reorganized company shall issue to the holders of General and Refunding Bonds, both publicly held and pledged, for the claim as of January 1, 1942, of $1,320.59 for principal and interest on each $1,000 in principal amount of such Bonds, the following securities:

$182.23	in principal amount of new Consolidated Mortgage Bonds;
301.78	in par value of new Preferred Stock; and
433.07	in par value of new Common Stock.
$917.08	(R. 3781).

The Commission concluded that the capitalizable assets of the Debtor would not permit the issuance of any securities with respect to $403.51 of the claim of $1,320.59 for principal and interest on each $1,000 General and Refunding Bond (R. 3781). This deficiency has now been reduced to a deficiency of $307.92 on each such Bond by interest payments made since the effective date of the Commission's Plan.

ARGUMENT

The petitioners have failed to meet the burden of showing that full compensatory treatment could be awarded to the General and Refunding Bondholders in a revised Plan.

No representative of the Debtor's stockholders claims that any securities of the reorganized company should be distributed to stockholders of the Debtor in the event that its capitalization remains fixed at $75,000,000. Accordingly, unless Mr. Meyer's contention is adopted and the claim of Southern Pacific Company, as a creditor, is disallowed, any distribution of shares of stock of the reorganized company to the stockholders of the Debtor must be made out of additional shares of common stock to be provided for by increasing the capitalization of the reorganized company above that fixed in the Commission's Plan. Any such increase in the capitalization of the reorganized company would have to be made out of its equity now allocated to the General and Refunding Bondholders and to unsecured creditors.

In distributing securities in its Plan, the Commission first took care of the most senior rights of each class of creditors. Bonds secured by all mortgages of the Debtor senior to the General and Refunding Mortgage (including the First Terminal Bonds pledged under the General and Refunding Mortgage) were given recognition. On the same basis, the General and Refunding Bondholders were awarded Consolidated Mortgage Bonds and preferred stock of the reorganized company in recognition of the first liens of the General and Refunding Mortgage (R. 3778). The entire amount of new Consolidated Mortgage Bonds and all of the shares of new preferred stock were required to satisfy liens senior to the fourth blanket lien of the General and Refunding Mortgage. All that was left for distribution at this point in the allocation was common

stock. All of the common stock was allocated to the General and Refunding Bondholders, both public holders and pledgees, except certain shares which were awarded to the Central Arkansas and Stephenville Bondholders in recognition of their claim as unsecured creditors to a portion of the free assets of the Debtor.

The common stock of the reorganized company therefore represents the residue of the Debtor's assets left after all claims senior to those of the General and Refunding Bondholders are satisfied. If the holders of the Debtor's outstanding stock are to share at all in the securities of the reorganized company, their share will have to come out of this residue.

The foregoing supplemental statement of facts demonstrates that the outright owners of General and Refunding Bonds are required by the Commission's Plan to make many sacrifices. Among other things, they will lose their position as creditors of the Debtor and will become stockholders of the reorganized company except as to the relatively small amount of bonds of the reorganized company to be issued to them.

In spite of the drastic treatment accorded the General and Refunding Bondholders by the Commission's Plan, the General and Refunding Trustee has not attacked it because the Trustee considers that the Commission has recognized all of the liens and other rights of the General and Refunding Bondholders.

The General and Refunding Trustee, however, has attacked the suggestion made in the Court below by the Debtor and Southern Pacific Company that the changed financial condition of the Debtor and the alleged increase in its prospective earning power could be recognized in a revised Plan by filling out the claims of the General and Refunding Bondholders with additional shares of common stock of the reorganized company at the rate of $1.00 in par value of such common stock for each $1.00 of unsatisfied claim and by then issuing the remaining additional shares of new common stock to stockholders of the Debtor.

Full compensatory treatment of the General and Refunding Bondholders might indeed be qualitative instead of quantitative, but the necessity for such treatment is an additional element to be considered in determining whether the improvement in the financial condition of the Debtor and the alleged increase in its earning power require the upsetting of the Commission's Plan which has been declared fair by the Commission and by the Courts below.

CONCLUSION

For the foregoing reason and for the reasons set forth in the carefully considered Reports of the Commission and in the opinions of the Courts below, the General and Refunding Trustee believes that the petitions for writs of certiorari should be denied.

Dated: February 21, 1947.

Respectfully submitted,

ALFRED H. PHILLIPS,
Of Counsel for Chemical Bank & Trust Company, as Successor Trustee under the General and Refunding Mortgage of St. Louis Southwestern Railway Company.